

MEMORIAL

OF THE

LEGISLATURE OF THE STATE OF WISCONSIN,

RELATING TO

The claim of the State to five per cent. of the net proceeds of the sales of the public lands within its limits.

FEBRUARY 12, 1859.—Referred to the Committee on Public Lands, and ordered to be printed.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the legislature of the State of Wisconsin respectfully represents:

That by section 7 of the act of Congress entitled "An act to enable the people of Wisconsin to form a constitution and State government, and for the admission of such State into the Union," approved August 6, 1846, it is provided, among other things, as follows, viz: "That five per cent. of the net proceeds of sales of all public lands lying within said State which have been or shall be sold by Congress from and after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, for the purpose of making public roads and canals in the same, as the legislature shall direct." This grant was made upon the condition that the State constitution thus to be formed should contain a clause or an ordinance irrevocably binding the State never to interfere with the primary disposal of the soil within its limits by the United States, and exempting the property of the United States from taxation, which condition was afterward strictly performed by the State, as may be seen by reference to section 2 of article 2 of said constitution.

Upon the adoption of said constitution by the people of the State of Wisconsin, the provision here referred to became and still is *irrevocable* without the consent of the United States, and your memorialists respectfully submit, that, upon the performance of said condition by the State, the obligation on the part of the United States to pay said five per cent. became equally binding and irrevocable, and such payment cannot be refused without a manifest violation of good faith,

unless it can be shown that the State has or will appropriate the funds to other purposes than those specified in the grant. Upon this point your memorialists submit that there is a mutual obligation, for the performance of which each party has pledged its faith to the other, depending, of course, entirely upon the terms of the grant, by which the United States government is bound to pay over the funds, and the State, in turn, is bound to appropriate them to certain purposes, and no others. It requires no argument to prove that neither party can change the terms of the grant without the consent of the other. The State cannot appropriate the funds arising from this source to the payment of its debts, nor add them to the general fund for ordinary State purposes. If this be true, can the United States compel the State so to appropriate them, by withholding them to pay the indebtedness of the State? in other words, can the United States take these funds, set apart as they are both by act of Congress and the constitution of said State for special and limited purposes, and appropriate them to such general purposes as may please the officers of the general government? Your memorialists think not, and respectfully submit that the United States have nothing whatever to do with the appropriation of these funds further than to require the State to apply them to specific purposes specified in said grant.

The convention which formed the State constitution deemed it sound and wise policy to set apart the five per centum of the net proceeds of the sales of public lands as a part of a separate fund to be exclusively applied to the support of common schools, normal schools, and academies; consequently, a provision to that effect was inserted in said constitution. The convention, however, did not attempt to do this without the consent of Congress. On the contrary, the provision here alluded to is made dependent upon the consent of Congress for its force and effect, (see section 2 of article 2 of said constitution,) and the convention, in order to obtain such consent, adopted as a part of said constitution a resolution requesting Congress, upon the admission of said State into the Union, to pass an act whereby said five per centum of the net proceeds of the sale of public lands lying within said State should be granted to said State for the use of schools, instead of the purposes mentioned in the said act of Congress approved August 6, 1846.

Your memorialists further represent that, by an act of Congress entitled "An act for the admission of the State of Wisconsin into the Union," approved May 29, 1848, the consent requested in and by said resolution was given, and the said State admitted into the Union, whereby said constitutional provision, applying said five per centum of the proceeds of the sales of public lands to school purposes became of binding force, and a part of the fundamental law of the State.—(See section 2 of the act of Congress last above mentioned.)

Your memorialists further represent, that there is now due to the school fund of the State of Wisconsin, from the general government, about the sum of two hundred and seventy thousand dollars, on account of the said five per cent. of the net proceeds of the sales of public lands lying within said State, under and by virtue of the several acts of Congress above mentioned, which is withheld by the Secretary of

the Treasury solely on the ground that the *Territory* of Wisconsin had diverted a portion of the lands granted thereto to aid in the building of the Milwaukie and Rock River canal, and applied the proceeds thereof to other purposes.

It seems to your memorialists to be a sufficient answer to the position of the Secretary to say, that the grants in question created each a separate and distinct fund, applied to separate and distinct purposes, and that the diversion of one of these funds by the State or territorial government constitutes no just reason why the general government should seize and divert the other. It is much wiser to hold to the good old doctrine, that all special funds (especially school funds) shall be regarded as sacred and inviolable, and that the unfortunate destruction or diversion of one such fund does not justify either the State or general government in making an attack upon another. Should these views be deemed unsound, your memorialists respectfully insist that the State is in no way responsible for the wrongful acts or misconduct of the territorial government, the power of the two governments emanating from entirely different sources.

The officers of the State are elected by the people, to whom they are responsible for an honest and faithful administration of the government, *under the constitution*, while the principal officers of the Territory were appointed, either directly or indirectly, by the President of the United States, and were responsible solely to the United States for the faithful administration of the territorial government under *an act of Congress*.

If the officers of the Territory abused their powers and misapplied funds placed in their hands by an act of Congress, they are responsible therefor to the government of the United States, from whence those powers emanated, and not to the State which afterwards sprang into existence by the voice of the people. Upon what principle, then, can it be said that a State is in any manner accountable to the United States for the delinquencies of a mere agent or servant of Congress, such as a territorial government?

And your memorialists further submit, as a legal proposition, that when the said State government was created, and said territorial government abolished by act of Congress, the liabilities of the territorial government were not assumed by the State, except in cases expressly provided for by the State constitution, or by act of Congress admitting the State into the Union. Especially is this true in case the liability originated by the wrongful acts of the Territory or its officers.

Upon the dissolution of the territorial government (in the absence of such provision) all of its liabilities ceased; for the misconduct of its officers, they alone remained personally responsible to the power that appointed them.

But there is still another view in which the question may be presented. The claim against the State is one of at least doubtful character. It not only remains unliquidated and unsettled, but its legality and justice are denied by the State; while, on the other hand, the claim of the State against the general government is settled and liqui-

dated, and admitted by all parties to be both legal and just. Now, by what authority of law does the Secretary of the Treasury assume and exercise the judicial functions necessary to enable him to decide all the legal questions arising in the matter, and to pass judgment against the State upon a doubtful claim, by offsetting one of these demands against the other?

Your memorialists respectfully submit that the Secretary of the Treasury does not possess any such judicial power. The State cannot in this way be compelled to pay a pretended unliquidated demand, whether right or wrong, just or unjust. It seems to your memorialists that the only proper course is for the general government to present and prosecute its claims before the State legislature, which can be done with the most perfect assurance that all just and legal claims will be allowed.

Your memorialists, therefore, respectfully ask that such act be passed by Congress as may be necessary to compel the Secretary of the Treasury of the United States to pay over to the State of Wisconsin, in the said five per cent. of the net proceeds of the sales of the public lands lying within the limits of said State for school purposes, according to the provisions of the several acts of Congress hereinbefore mentioned.

The governor of this State is hereby requested to forward a copy of this memorial to each of our senators and representatives in Congress, who are hereby authorized and requested to prosecute the said claim of the State, both before Congress and the proper department of government.

WM. P. LYON,
Speaker of the Assembly.

D. WORTHINGTON,
President pro tem. of the Senate.

Approved February 4, 1859.

ALEX. W. RANDALL.

STATE OF WISCONSIN, }
Secretary's Office, } ss.

The secretary of state of the State of Wisconsin does hereby certify that the foregoing memorial has been compared with the original memorial in this office, and that the same is a true and correct copy thereof, and of the whole of such original.

In witness whereof, I have hereunto set my hand and affixed the
[L. S.] great seal of the State, at the capitol, in Madison, this eighth
day of February, A. D. 1859.

J. D. RUGGLES,
Assistant Secretary of State.